

E AND R AMENDMENTS TO LB 690

Introduced by Larson, 40, Chairperson Enrollment and Review

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Section 38-2021, Revised Statutes Cumulative
4 Supplement, 2010, is amended to read:

5 38-2021 Unprofessional conduct means any departure from
6 or failure to conform to the standards of acceptable and prevailing
7 practice of medicine and surgery or the ethics of the profession,
8 regardless of whether a person, patient, or entity is injured, or
9 conduct that is likely to deceive or defraud the public or is
10 detrimental to the public interest, including, but not limited to:

11 (1) Performance by a physician of an abortion as defined
12 in subdivision (1) of section 28-326 under circumstances when he
13 or she will not be available for a period of at least forty-eight
14 hours for postoperative care unless such postoperative care is
15 delegated to and accepted by another physician;

16 (2) Performing an abortion upon a minor without having
17 satisfied the ~~notice~~ requirements of sections 71-6901 to 71-6908
18 and sections 4, 5, 11, and 13 of this act;

19 (3) The intentional and knowing performance of a
20 partial-birth abortion as defined in subdivision (7) of section
21 28-326, unless such procedure is necessary to save the life of the
22 mother whose life is endangered by a physical disorder, physical
23 illness, or physical injury, including a life-endangering physical

1 condition caused by or arising from the pregnancy itself; and

2 (4) Performance by a physician of an abortion in
3 violation of the Pain-Capable Unborn Child Protection Act.

4 Sec. 2. Section 71-6901, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 71-6901 For purposes of sections 71-6901 to 71-6908 and
7 sections 4, 5, 11, and 13 of this act:

8 ~~(1) Abortion shall mean an act, procedure, device, or~~
9 ~~prescription administered to a woman known by the person so~~
10 ~~administering to be pregnant and administered with the intent~~
11 ~~and result of producing the premature expulsion, removal, or~~
12 ~~termination of the human life within the womb of the pregnant~~
13 ~~woman, except that in cases in which the unborn child's viability~~
14 ~~is threatened by continuation of the pregnancy, early delivery~~
15 ~~after viability shall not be construed as an abortion.~~

16 ~~(2) Facsimile copy shall mean a copy generated by a~~
17 ~~system that encodes a document or photograph into electrical~~
18 ~~signals, transmits those signals over telecommunications lines, and~~
19 ~~then reconstructs the signals to create an exact duplicate of the~~
20 ~~original document at the receiving end.~~

21 ~~(3) Parent shall mean one parent or guardian of the~~
22 ~~pregnant woman selected by the pregnant woman. The attending~~
23 ~~physician shall certify in writing in the pregnant woman's medical~~
24 ~~record the parent or guardian selected by the woman.~~

25 ~~(4) Physician or attending physician shall mean the~~
26 ~~physician intending to perform the abortion; and~~

27 ~~(5) Pregnant woman shall mean an unemancipated woman~~

1 ~~under eighteen years of age who is pregnant or a pregnant woman~~
2 ~~for whom a guardian has been appointed pursuant to sections 30-2620~~
3 ~~to 30-2629 because of a finding of incapacity, disability, or~~
4 ~~incompetency.~~

5 (1) Abortion means the act of using or prescribing any
6 instrument, medicine, drug, or any other substance, device, or
7 means with the intent to terminate the clinically diagnosable
8 pregnancy of a woman with knowledge that the termination by those
9 means will with reasonable likelihood cause the death of the unborn
10 child. Such use, prescription, or means is not an abortion if done
11 with the intent to:

12 (a) Save the life or preserve the health of an unborn
13 child;

14 (b) Remove a dead unborn child caused by a spontaneous
15 abortion; or

16 (c) Remove an ectopic pregnancy;

17 (2) Coercion means restraining or dominating the choice
18 of a minor female by force, threat of force, or deprivation of food
19 and shelter;

20 (3) Consent means a notarized written statement signed
21 by a parent, legal guardian, or an alternate person as described
22 in section 4 of this act if the pregnant woman declaring that the
23 affiant has been informed that the pregnant woman intends to seek
24 an abortion and that the affiant consents to the abortion;

25 (4) Department means the Department of Health and Human
26 Services;

27 (5) Emancipated means a situation in which a person under

1 eighteen years of age has been married or legally emancipated;

2 (6) Facsimile copy means a copy generated by a system
3 that encodes a document or photograph into electrical signals,
4 transmits those signals over telecommunications lines, and then
5 reconstructs the signals to create an exact duplicate of the
6 original document at the receiving end;

7 (7) Incompetent means any person who has been adjudged
8 a disabled person and has had a guardian appointed under sections
9 30-2617 to 30-2629;

10 (8) Medical emergency means a condition that, on
11 the basis of the physician's good-faith clinical judgment, so
12 complicates the medical condition of a pregnant woman as to
13 necessitate the immediate abortion of her pregnancy to avert her
14 death or for which a delay will create serious risk of substantial
15 and irreversible impairment of a major bodily function;

16 (9) Physician means any person licensed to practice
17 medicine in this state as provided in the Uniform Credentialing
18 Act. Physician includes a person who practices osteopathy; and

19 (10) Pregnant woman means an unemancipated woman under
20 eighteen years of age who is pregnant or a woman for whom a
21 guardian has been appointed pursuant to sections 30-2617 to 30-2629
22 because of a finding of incapacity, disability, or incompetency who
23 is pregnant.

24 Sec. 3. Section 71-6902, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 71-6902 ~~(1)~~ No abortion shall be performed upon a
27 pregnant woman until at least forty-eight hours after written

1 notice of the pending abortion has been delivered in the manner
2 specified in subsection (2) or (3) of this section.

3 ~~(2) The notice shall be addressed to the parent at his or~~
4 ~~her usual place of residence and shall be delivered personally to~~
5 ~~the parent by the physician or an agent.~~

6 ~~(3) In lieu of the delivery required by subsection (2) of~~
7 ~~this section, notice shall be made by registered or certified mail~~
8 ~~addressed to the parent at his or her usual place of residence with~~
9 ~~return receipt requested and restricted delivery to the addressee,~~
10 ~~which means the postal employee can only deliver mail to the~~
11 ~~authorized addressee. Time of delivery shall be deemed to occur at~~
12 ~~twelve o'clock noon on the next day on which regular mail delivery~~
13 ~~takes place subsequent to the mailing.~~

14 Except in the case of a medical emergency or except as
15 provided in sections 71-6903 and 71-6906 and section 4 of this
16 act, no person shall perform an abortion upon a pregnant woman
17 unless, in the case of a woman who is less than eighteen years
18 of age, he or she first obtains the notarized written consent of
19 both the pregnant woman and one of her parents or a legal guardian
20 or, in the case of a woman for whom a guardian has been appointed
21 pursuant to sections 30-2617 to 30-2629, he or she first obtains
22 the notarized written consent of her guardian. In deciding whether
23 to grant such consent, a pregnant woman's parent or guardian shall
24 consider only his or her child's or ward's best interest.

25 Sec. 4. If the pregnant woman declares in a signed
26 written statement that she is a victim of abuse, sexual abuse as
27 defined in section 28-367, or child abuse or neglect as defined in

1 section 28-710 by either of her parents or her legal guardians,
2 then the attending physician shall obtain the notarized written
3 consent required by section 71-6902 from a grandparent specified
4 by the pregnant woman. The physician who intends to perform the
5 abortion shall certify in the pregnant woman's medical record
6 that he or she has received the written declaration of abuse or
7 neglect. Any physician relying in good faith on a written statement
8 under this section shall not be civilly or criminally liable under
9 sections 71-6901 to 71-6908 and sections 4, 5, 11, and 13 of
10 this act for failure to obtain consent. If such a declaration is
11 made, the attending physician or his or her agent shall inform the
12 pregnant woman of his or her duty to notify the proper authorities
13 pursuant to sections 28-372 and 28-711.

14 Sec. 5. No parent, guardian, or any other person shall
15 coerce a pregnant woman to obtain an abortion. If a pregnant
16 woman is denied financial support by her parents, guardians, or
17 custodians due to her refusal to obtain an abortion, the pregnant
18 woman shall be deemed emancipated for purposes of eligibility for
19 public assistance benefits, except that such benefits may not be
20 used to obtain an abortion.

21 Sec. 6. Section 71-6903, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 71-6903 (1) The requirements and procedures under this
24 section are available to pregnant women whether or not they are
25 residents of this state.

26 ~~(1)~~ (2) If a pregnant woman elects not to notify her
27 parent, obtain the consent of her parents or guardians, a judge of

1 a district court, separate juvenile court, or county court sitting
2 as a juvenile court shall, upon petition or motion and after an
3 appropriate hearing, authorize a physician to perform the abortion
4 if the court determines by clear and convincing evidence that the
5 pregnant woman is both sufficiently mature and capable of giving
6 informed consent to the proposed abortion. If the court determines
7 that the pregnant woman is not mature or if the pregnant woman
8 does not claim to be mature, the court shall determine whether
9 the performance of an abortion upon her without notification of
10 her parent would be in her best interests and shall authorize
11 a physician to perform the abortion without such notification if
12 the court concludes that the best interests of the pregnant woman
13 would be served thereby. well-informed to decide whether to have an
14 abortion. If the court does not make the finding specified in this
15 subsection or subsection (3) of this section, it shall dismiss the
16 petition.

17 (3) If the court finds, by clear and convincing evidence,
18 that there is evidence of abuse, sexual abuse as defined in section
19 28-367, or child abuse or neglect as defined in section 28-710 of
20 the pregnant woman by a parent or a guardian or that an abortion
21 without the consent of a parent or a guardian is in the best
22 interest of the pregnant woman, the court shall issue an order
23 authorizing the pregnant woman to consent to the performance or
24 inducement of an abortion without the consent of a parent or a
25 guardian. If the court does not make the finding specified in this
26 subsection or subsection (2) of this section, it shall dismiss the
27 petition.

1 ~~(2)~~ (4) A facsimile copy of the petition or motion may be
2 transmitted directly to the court for filing. If a facsimile copy
3 is filed in lieu of the original document, the party filing the
4 facsimile copy shall retain the original document for production to
5 the court if requested to do so.

6 ~~(3)~~ (5) A court shall not be required to have a facsimile
7 machine nor shall the court be required to transmit orders or other
8 material to attorneys or parties via facsimile transmission.

9 ~~(4)~~ Am (6) The pregnant woman may commence an action for
10 waiver of notification shall be commenced the consent requirement
11 by the filing of a petition or motion personally, by mail, or by
12 facsimile on a form provided by the State Court Administrator.

13 (7) The State Court Administrator shall develop the
14 petition form and accompanying instructions on the procedure for
15 petitioning the court for a waiver of ~~notification~~, consent,
16 including the name, address, telephone number, and facsimile number
17 of each court in the state. A sufficient number of petition forms
18 and instructions shall be made available in each courthouse in such
19 place that members of the general public may obtain a form and
20 instructions without requesting such form and instructions from the
21 clerk of the court or other court personnel. The clerk of the court
22 shall, upon request, assist in completing and filing the petition
23 for waiver of ~~notification~~. consent.

24 ~~(5)~~ (8) Proceedings in court pursuant to this section
25 shall be confidential and shall ensure the anonymity of the
26 pregnant woman. The pregnant woman shall have the right to file
27 her petition in the court using a pseudonym or using solely her

1 initials. Proceedings shall be held in camera. Only the pregnant
2 woman, the pregnant woman's guardian ad litem, the pregnant woman's
3 attorney, and a person whose presence is specifically requested by
4 the pregnant woman, ~~the pregnant woman's guardian ad litem,~~ or the
5 pregnant woman's attorney may attend the hearing on the petition.
6 All testimony, all documents, all other evidence presented to the
7 court, the petition and any order entered, and all records of any
8 nature and kind relating to the matter shall be sealed by the
9 clerk of the court and shall not be open to any person except upon
10 order of the court for good cause shown. A separate docket for the
11 purposes of this section shall be maintained by the clerk of the
12 court and shall likewise be sealed and not opened to inspection by
13 any person except upon order of the court for good cause shown.

14 ~~(6)~~ (9) A pregnant woman who is subject to this section
15 may participate in the court proceedings on her own behalf, and
16 the court may appoint a guardian ad litem for her. The court shall
17 advise the pregnant woman that she has a right to court-appointed
18 counsel and shall, upon her request, provide her with such counsel.
19 Such counsel shall receive a fee to be fixed by the court and to
20 be paid out of the treasury of the county in which the proceeding
21 was held.

22 ~~(7)~~ (10) Proceedings in court pursuant to this section
23 shall be given such precedence over other pending matters so that
24 the court may reach a decision promptly and without delay to serve
25 the best interests of the pregnant woman. In no case shall the
26 court fail to rule within seven calendar days from the time the
27 petition is filed. If the court fails to rule within the required

1 time period, the pregnant woman may file an application for a writ
2 of mandamus with the Supreme Court. If cause for a writ of mandamus
3 exists, the writ shall issue within three days. If the judge issues
4 a ruling adverse to the pregnant woman, the judge shall issue
5 written findings of fact and conclusions of law.

6 ~~(8)~~ (11) The court shall issue a written order which
7 shall be provided immediately to the pregnant woman, the pregnant
8 woman's guardian ad litem, the pregnant woman's attorney, or any
9 other person designated by the pregnant woman to receive the order.
10 which includes specific factual findings and legal conclusions
11 supporting its decision which shall be provided immediately to
12 the pregnant woman, the pregnant woman's guardian ad litem, the
13 pregnant woman's attorney, and any other person designated by the
14 pregnant woman to receive the order. Further, the court shall order
15 that a confidential record of the evidence and the judge's findings
16 and conclusions be maintained. At the hearing, the court shall
17 hear evidence relating to the emotional development, maturity,
18 intellect, and understanding of the pregnant woman.

19 Sec. 7. Section 71-6904, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 71-6904 (1) An appeal to the Supreme Court shall be
22 available to any pregnant woman for whom a court denies an order
23 authorizing an abortion without ~~notification.~~ consent. An order
24 authorizing an abortion without ~~notification~~ consent shall not be
25 subject to appeal.

26 (2) An adverse ruling by the court may be appealed to the
27 Supreme Court.

1 (3) A pregnant woman may file a notice of appeal of any
2 final order to the Supreme Court. The State Court Administrator
3 shall develop the form for notice of appeal and accompanying
4 instructions on the procedure for an appeal. A sufficient number of
5 forms for notice of appeal and instructions shall be made available
6 in each courthouse in such place that members of the general public
7 can obtain a form and instructions without requesting such form and
8 instructions from the clerk of the court or other court personnel.

9 (4) The clerk of the court shall cause the court
10 transcript and bill of exceptions to be filed with the Supreme
11 Court within four business days, but in no event later than seven
12 calendar days, from the date of the filing of the notice of appeal.

13 (5) In all appeals under this section the pregnant woman
14 shall have the right of a confidential and expedited appeal and the
15 right to counsel at the appellate level if not already represented.
16 Such counsel shall be appointed by the court and shall receive a
17 fee to be fixed by the court and to be paid out of the treasury
18 of the county in which the proceeding was held. The pregnant woman
19 shall not be required to appear.

20 (6) The Supreme Court shall hear the appeal de novo on
21 the record and issue a written decision which shall be provided
22 immediately to the pregnant woman, the pregnant woman's guardian
23 ad litem, the pregnant woman's attorney, or any other person
24 designated by the pregnant woman to receive the order.

25 (7) The Supreme Court shall rule within seven calendar
26 days from the time of the docketing of the appeal in the Supreme
27 Court.

1 (8) The Supreme Court shall adopt and promulgate rules
2 to ensure that proceedings under this section are handled in a
3 confidential and expeditious manner.

4 Sec. 8. Section 71-6905, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 71-6905 No filing fees or costs shall be required of
7 any pregnant woman at either the trial or appellate level for any
8 proceedings pursuant to sections 71-6901 to 71-6908 and sections 4,
9 5, 11, and 13 of this act.

10 Sec. 9. Section 71-6906, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 71-6906 ~~Notification~~ Consent shall not be required
13 pursuant to sections 71-6901 to 71-6908 and sections 4, 5, 11, and
14 13 of this act if any of the following conditions exist:

15 (1) ~~The attending physician certifies in writing in the~~
16 ~~pregnant woman's medical record that continuation of the pregnancy~~
17 ~~provides an immediate threat and grave risk to the life or health~~
18 ~~of the pregnant woman and there is insufficient time to provide the~~
19 ~~required notification;~~

20 (2) ~~The abortion is authorized in writing by the person~~
21 ~~who is entitled to notification; or~~

22 (3) ~~The pregnant woman declares that she is a victim of~~
23 ~~abuse as defined in section 28-351, sexual abuse as defined in~~
24 ~~section 28-367, or child abuse or neglect as defined in section~~
25 ~~28-710. Notice of such a declaration shall be made to the proper~~
26 ~~authorities as provided in sections 28-372 and 28-711. If such a~~
27 ~~declaration is made, the attending physician or his or her agent~~

1 shall inform the pregnant woman of his or her duty to notify the
2 proper authorities as provided in sections 28-372 and 28-711.

3 (1) The attending physician certifies in the pregnant
4 woman's medical record that a medical emergency exists and there is
5 insufficient time to obtain the required consent; or

6 (2) Consent is waived under section 71-6903.

7 Sec. 10. Section 71-6907, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 71-6907 (1) Any physician or attending physician who
10 knowingly and intentionally or with reckless disregard performs an
11 abortion in violation of sections 71-6901 to 71-6906 and sections
12 4, 5, 11, and 13 of this act shall be guilty of a Class III
13 misdemeanor.

14 (2) Performance of an abortion in violation of such
15 sections shall be grounds for a civil action by a person wrongfully
16 ~~denied notification.~~ the right and opportunity to consent.

17 (3) A person shall be immune from liability under such
18 sections (a) if he or she establishes by written evidence that
19 he or she relied upon evidence sufficient to convince a careful
20 and prudent person that the representations of the pregnant woman
21 regarding information necessary to comply with such sections are
22 bona fide and true, ~~(b) if the person has attempted with reasonable~~
23 ~~diligence to deliver notification as required by section 71-6902~~
24 ~~but has been unable to do so,~~ or ~~(c)~~ (b) if the person has
25 performed an abortion authorized by a court order issued pursuant
26 to section 71-6903 or 71-6904.

27 (4) Any person not authorized to provide consent under

1 sections 71-6901 to 71-6908 and sections 4, 5, 11, and 13 of this
2 act who provides consent is guilty of a Class III misdemeanor.

3 (5) Any person who coerces a minor to have an abortion is
4 guilty of a Class III misdemeanor.

5 Sec. 11. A monthly report indicating the number of
6 consents obtained under sections 71-6901 to 71-6908 and sections 4,
7 5, 11, and 13 of this act, the number of times in which exceptions
8 were made to the consent requirement under such sections, the type
9 of exception, the pregnant woman's age, and the number of prior
10 pregnancies and prior abortions of the pregnant woman shall be
11 filed by the physician with the department on forms prescribed by
12 the department. The name of the pregnant woman shall not be used on
13 the forms. A compilation of the data reported shall be made by the
14 department on an annual basis and shall be available to the public.

15 Sec. 12. Section 71-6908, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 71-6908 The Legislature recognizes and hereby declares
18 that some teenage pregnancies are a direct or indirect result
19 of family or foster family abuse, neglect, or sexual assault.
20 The Legislature further recognizes that the actions of abuse,
21 neglect, or sexual assault are crimes regardless of whether they
22 are committed by strangers, acquaintances, or family members. The
23 Legislature further recognizes the need for a ~~parent or guardian~~
24 ~~notification~~ parental consent bypass system as set out in section
25 71-6903 due to the number of unhealthy family environments in
26 which some pregnant women reside. The Legislature encourages county
27 attorneys to prosecute persons accused of committing acts of abuse,

1 incest, neglect, or sexual assault pursuant to sections 28-319,
2 28-319.01, 28-320, 28-320.01, 28-703, and 28-707 even if the
3 alleged crime is committed by a biological or adoptive parent,
4 foster parent, or other biological, adoptive, or foster family
5 member.

6 Sec. 13. (1) Nothing in sections 71-6901 to 71-6908 and
7 sections 4, 5, 11, and 13 of this act shall be construed as
8 creating or recognizing a right to abortion.

9 (2) It is not the intent of sections 71-6901 to 71-6908
10 and sections 4, 5, 11, and 13 of this act to make lawful an
11 abortion that is currently unlawful.

12 Sec. 14. If any one or more provisions, sections,
13 subsections, sentences, clauses, phrases, or words of this act
14 or the application thereof to any person or circumstance is found
15 to be unconstitutional, the same is hereby declared to be severable
16 and the balance of this act shall remain effective notwithstanding
17 such unconstitutionality. The Legislature hereby declares that
18 it would have passed this act, and each provision, section,
19 subsection, sentence, clause, phrase, or word thereof, irrespective
20 of the fact that any one or more provisions, sections, subsections,
21 sentences, clauses, phrases, or words be declared unconstitutional.

22 Sec. 15. Original sections 71-6901, 71-6902, 71-6903,
23 71-6904, 71-6905, 71-6906, 71-6907, and 71-6908, Reissue Revised
24 Statutes of Nebraska, and section 38-2021, Revised Statutes
25 Cumulative Supplement, 2010, are repealed.

26 2. On page 1, line 6, after the first semicolon insert
27 "to provide and change penalties; to require reports;".